

## **REMARKS**

### **Overview**

This amendment accompanies a request for continued examination. Claims 84-89, 92-94, 98-100, 102-103, 105, 108 and 110 are pending in this application. Claims 84, 92, 98, 99, and 105 have been amended. The present response is an earnest effort to place all claims in proper form for immediate allowance. Reconsideration and passage to issuance is therefore respectfully requested.

### **Issues under 35 U.S.C. § 103**

Claims 84, 88-89, 94, 98-100, 102-103, and 110 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,393,404 to Waters et al., in view of U.S. Patent No. 5,325,293 to Dorne and U.S. Patent Number 5,823,949 to Goltra, and further in view of IBM Visualization Data Explorer QuickStart Guide, 1997 (hereinafter "QuickStart").

Waters et al. is directed towards a system and method for optimizing diagnosis procedures and reimbursement claims using a structured search space (abstract). Waters et al. builds a search tree of all possible combinations of the simple procedures and the compound procedures in a list of ordered procedures and then searches the search tree for the lowest total of values associated with the medical procedures in the list of ordered procedures so as to determine the lowest reimbursement value combination (col. 12, lines 49-67). Waters et al. does not provide for ordering of diagnosis codes associated with a procedure to create a record of a patient encounter.

Dorne et al. is directed towards a method and system for correlating billing codes with planned or performed medical procedures (Abstract). Dorne et al. does not provide for ordering of diagnosis codes associated with a procedure to create a record of a patient encounter.

Goltra is directed towards a method and apparatus for helping healthcare professionals create clinical protocols or assist in direct entry of the medical findings into a chart by intelligently prompting a health care professional with medical findings associated with one or more medical findings which have already been entered in the protocol (Abstract). Goltra further discloses that possible diagnosis are then ranked in descending point total and a predetermined plurality of the highest ranked diagnoses are selected (Abstract). Goltra, does not however, provide for ordering of diagnosis codes associated with a procedure to create a record of a patient encounter.

QuickStart makes no disclosure of procedure codes or diagnosis codes and thus also does not disclose providing for ordering of diagnosis codes associated with a procedure to create a record of a patient encounter.

In fact, none of the references cited by the Examiner provide for ordering of diagnosis codes associated with a procedure after they have been received. None of the cited references, alone or in combination, teach "providing a user interface adapted for ranking the plurality of diagnosis codes linked with the patient procedure code in a user defined rank order after receiving the selection of the plurality of diagnosis codes" as recited in independent claim 84. None of the cited references, alone or in combination, teach "receiving a change in ordering of diagnosis codes within the plurality of diagnosis codes" as recited in independent claim 92. None of the cited references, alone or in combination teach "receiving a change in ordering of diagnosis codes from a user" as recited in independent claim 98. None of the cited references,

alone or in combination teach "using the user interface to reorder the plurality of diagnosis codes" as recited in independent claim 105.

Moreover, allowing a medical care provider to order the diagnosis codes provides an advantage of better documenting a patient encounter. For each procedure performed, the medical care provider has rank ordered the diagnose codes which provides additional insight into why each procedure was performed and thus captures information not captured in the cited prior art references thereby resulting in a code-driven medical reporting and billing system. None of the cited prior art references allow a medical care provider to rank order diagnosis codes after they are entered or recognize how this rank-ordering captures additional information that better documents the patient encounter for medical reporting or billing purposes in a code-driven manner.

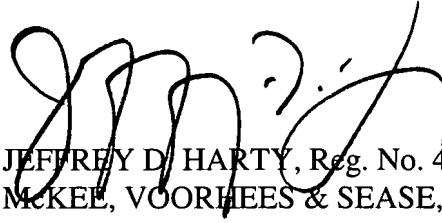
It is therefore respectfully submitted that all pending rejections be withdrawn, as the claimed invention is patentably distinct over the cited prior art references.

## **Conclusion**

This amendment accompanies the filing of a Request for Continued Examination (RCE). Please charge Deposit Account No. 26-0084 the amount of \$395.00 for the RCE per the attached transmittal. No other fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Harty', is written over the printed name and firm information.

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Attorneys of Record

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Enclosures: DECLARATION OF INVENTOR, PETER V. BOESEN (Exhibits A-F)



## PATENT

### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT : **BOESEN, Peter V.**  
SERIAL NO : 09/558,519  
FILED : April 26, 2000  
TITLE : POINT OF SERVICE BILLING AND RECORDS SYSTEM

Grp./A.U. : 3626  
Examiner : PASS, Natalie  
Conf. No. : 9687  
Docket No. : P04179US00

### DECLARATION OF INVENTOR, PETER V. BOESEN

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Madam:

I, Peter V. Boesen, hereby declare the following:

1. I am the named inventor of the above-entitled patent application relating to a medical records and billing system.
2. I am a Medical Doctor and the focus of my practice has been Pediatric Otolaryngology.
3. In approximately October/November of 1995, I purchased a device known as the MED-PAD from Medical Manager Corporation, a medical billing and records system software provider. A picture of the MED-PAD device is attached as Exhibit A to my Declaration. It is my understanding that the MED-PAD device was designed by Systems Plus, Inc. of Mountain View, California.
4. The MED-PAD device is a computer with a touch screen for receiving inputs from the user. The intended purpose of the device was to enter information about hospitalized patients, including a single applicable procedure and associated diagnosis codes.

5. To my knowledge, Medical Manager has not provided or sold another MED-PAD device, but provided the device for use in my medical practice. Unfortunately, my experience was that the device was unproven and unworkable. When first used in my practice in approximately October/November of 1995, it crashed our backend billing system. It caused numerous fatal system errors, requiring the work of multiple programmers to restore the integrity of our backend computer system. This required days of work. Recognizing the facts surrounding this system, it was evident the system had not been applied to application and was a work in progress. After restoring backend system integrity in the October/November time frame in 1995, which was a huge task, I designed features to allow the MED-PAD to function, albeit in a limited fashion, without crashing the backend computer system.

6. However, serious problems remained with the MED-PAD. For example, the MED-PAD would allow the user to enter the same diagnosis code multiple times for a patient encounter, which would result in claim rejection. There were also significant problems involved in linking one or more diagnosis codes to a particular procedure code. The user interface of MED-PAD allowed the user to enter a procedure code and a plurality of diagnosis codes with no visual representation on the user interface as to whether any particular diagnosis code was linked to a particular procedure code.

7. Attached as Exhibits B through F to my declaration are screen shots from the MED-PAD user interface. The names of living patients have been redacted. Exhibit B comprises the About MED-PAD screen, Main Menu screen and Patient Selection Screen.

8. Exhibit C is a screen shot of the Encounter Form – Procedure Code Screen that shows a limited number of procedure codes capable of being entered. There was no way to determine on this screen whether more than one of the pre-set codes had been selected. Exhibit

D is a pre-set Encounter Form - Diagnosis screen. The user cannot tell whether a code not shown on the screen had been selected. There is a screen showing some selected diagnosis codes (Exhibit E) and there is a screen showing some selected procedure codes (Exhibit F), but there are no visual linkages between the types of procedure and diagnosis codes. Entering multiple procedure codes, as shown in Exhibit F (which overlays the screen in Exhibit C) serves to compound the problem. The user could only assume that certain diagnosis codes were linked to a particular procedure code, but there was nothing in the user interface to verify this, compounded further if more than one procedure had been selected. Although the diagnosis codes could be rank ordered in some fashion into the MED-PAD device as shown in Exhibit E, one had to assume that the "top" code was in the primary diagnosis code position. Linkage to procedure codes was still a critical problem. That is, the inability to ascertain the linkage of one or more diagnosis codes with a procedure code remained an insurmountable problem with the MED-PAD device. No summary of linkages was capable on the MED-PAD.

8. Use of the MED-PAD device in my medical practice was for purely private purposes. The MED-PAD was never used outside of my practice. Any computer programmers that I engaged to make changes and correct problems in functionality were working at my direction and signed appropriate confidentiality agreements. At all times, the MED-PAD device remained under my direct control and I regarded my use and continued efforts to improve the device as further experimentation. All modifications to the device were at my instruction and remained in my control.

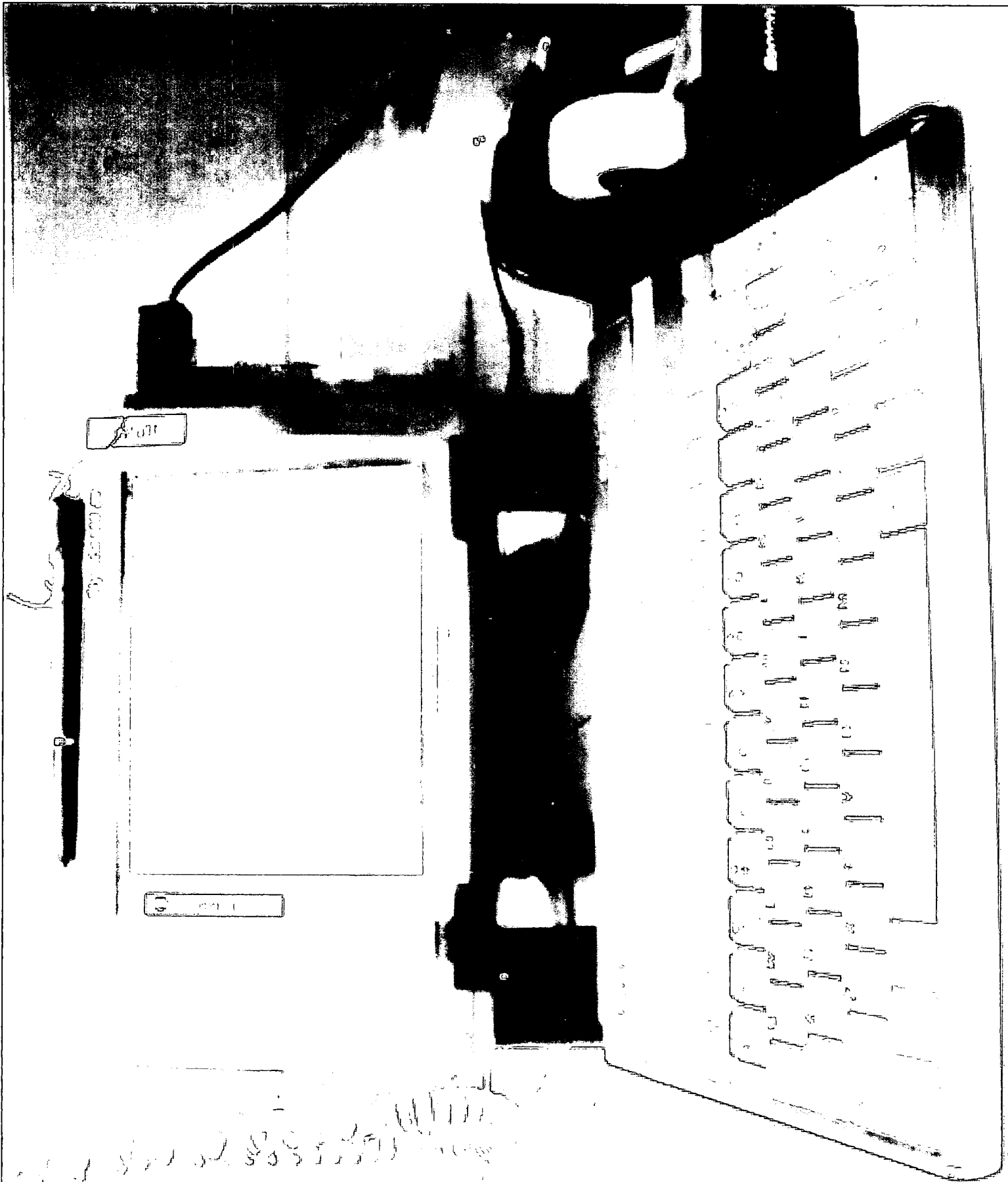
The undersigned further declares that all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the

like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application of any patent issuing thereon. While not believed relevant to patentability or this declaration, out of an abundance of caution in compliance with the duty of disclosure, I inform the PTO that since the filing of this application I have been convicted of medical fraud and perjury in an action captioned United States v. Boesen (S.D. Iowa), case No. 4:05-CV-00262-JEG. I vigorously maintain my innocence. The case is not yet final, but currently on appeal.

Date

6-7-07

  
Peter V. Boesen



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EXHIBIT  
A

Fitbit Med-Pad

# MED-PAD<sup>TM</sup>

1000 Adams Street Suite A-415

Mountain View, CA 94043

Phone (415) 959-7047

Systems Plus, Inc

100 Clyde Avenue

Mountain View CA 94043

Phone (415) 959-7047

Verizon

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EXHIBIT

B

Main Menu

Preorder Forms

Clinical Data

Import File

Send to Medical Manager

Tools and Utilities

About Med-Ped

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EXHIBIT

Source: Department of Defense

Items are grouped into three categories:

Number

Description

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461 2  
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ACUTE SPHENOIDAL SINUSITIS  
CHRONIC MAXILLARY SINUSITIS

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Description

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EXHIBIT

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